IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 15187 of 2007(G)

PETITIONER:

KUNJAMMA, KANNANKARA, KANDIYOOR MURI,
THATTARAMPALAM, MAVELIKKARA VILLAGE.

BY ADV. SRI.P.SREEKUMAR
SRI.K.S.MANU (PUNUKKONNOOR)

RESPONDENTS:
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1. SANTHOSH KUMAR, LICENSEE,
T.S NO.19, KANDIYOOR, THATTARAMBALAM, MAVELIKARA.

2. THE EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

3. ASST. EXCISE COMMISSIONER,
ALAPPUZHA.

4. EXCISE CIRCLE INSPECTOR, MAVELIKKARA.

R1 BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.RASHEED C.NOORANAD
R2 TO R4 BY GOVERNMENT PLEADER (SHRI P.K. RAVIKRISHNAN)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C). NO.15187 OF 2007 G

PETITIONER'S EXHIBITS:

EXT.P1 **TRUE COPY OF THE COMPLAINT DATED 2.3.1996.**

EXT.P2 **TRUE COPY OF THE COMPLAINT DATED 11.5.2007 SUBMITTED BEFORE THE POLICE.**

EXT.P3 **TRUE COLPY OF THE RECEIPT ISSUED IN RESPECT OF P2 COMPLAINT.**

EXT.P4 **TRUE COPY OF THE PETITION DATED 9.5.2007 SUBMITTED BEFORE THE SECOND RESPONDENT.**

EXT.P5 **TRUE COPY OF THE CERTIFICATE ISSUED BY THE TALUK SURVEYOR DATED 21.7.2007.**

EXT.P6 **TRUE COPY OF THE REQUEST DATED 14.7.2007 SUBMITTED BEFORE THE TAHSILDAR, MAVELIKARA.**

RESPONDENTS' EXHIBITS: NIL.

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

W.P.C. NO. 15187 OF 2007 G

Dated this the 24th September, 2007

JUDGMENT

Petitioner has approached this Court seeking a mandamus directing respondents 2 and 3 to order the shifting of T.S. No.19 from its present location. She also seeks a direction to the second respondent to consider Exct.P4 and order the shifting of T.S. No.19 from its present location. Case of the petitioner, in brief, is as follows:

She is aggrieved by the setting up of a Toddy Shop by the first respondent within the prohibited distance of four hundred metres from the Thattarambalam Devi Temple, Kandiyoor Mahadevar Temple and the Salvation Army Church.

2. I heard the learned counsel for the parties. A Counter Affidavit has been filed by the first respondent as also the second respondent. The stand taken by the second respondent is that the distance from the Temples and the Government U.P. School are 414 metres, 574 metres and 505 metres respectively.

The distance from the above shop to the Salvation Army Church and SNDP Branch are 291 metres and 264 metres respectively. It is also stated that the licence to the shop was issued on the impression that Gurumandiram and Salvation Army Church will not come under the purview of the Institutions mentioned in Rule 7(2) of the Kerala Abkari Shops Disposal Rules, 2002.

3. The petitioner has filed a Reply Affidavit also. Heard the learned counsel appearing for the parties. Learned counsel for the petitioner would point out Ext.P5 Certificate issued by the Taluk Surveyor. It is stated that the distance is only 387 metres from the Thattarambalam Devi Temple to the toddy shop as mentioned in Ext.P5 Certificate. Learned counsel for the first respondent would contend that the distance has to be measured from gate to gate. In such circumstances, the Writ Petition is disposed of as follows:

The third respondent will measure the property, also using the assistance of the Taluk Surveyor, Mavelikkara in accordance with the Rules and take a decision as to whether the distance

from the toddy shop to the Thattarambalam Devi Temple and Kandiyoor Mahadevar Temple are within 400 metres. If it is found within 400 metres, appropriate decision in accordance with law will be taken, so that the shop does not function within the prohibited distance. The measurement will be carried out and a decision will be taken by the third respondent as aforesaid with notice to the petitioner and first respondent within a period of three weeks from the date of receipt of a copy of this Judgment. The second respondent will also consider and take a decision as to whether the Salvation Army Church will be a Church within the meaning of Rule 7. A decision in this regard by the second respondent will be taken within a period of one month from the date of receipt of a copy of this Judgment.

K. M. JOSEPH, JUDGE

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